

March 28, 2013

SENT VIA EMAIL/FIRST-CLASS MAIL:

John Laird, Secretary
California Natural Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

Charles R. Hoppin, Chairman
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Dear Secretary Laird and Chairman Hoppin:

Thank you for your February 6, 2013 response to the December 20, 2012 letter requesting specific language in the Bay Delta Conservation Plan (BDCP) Draft EIR/EIS and in any State Water Board order approving water right changes needed to implement the BDCP. Our goal continues to be that implementation of the BDCP avoid the redirection of impacts to upstream water users.

We appreciate your acknowledgement of our concerns and are heartened by the policies of the California Natural Resources Agency that are articulated in your February letter, particularly the policies establishing that the BDCP “will not result in any exemption for the CVP and SWP from contributing water when the needs of the entire Delta are evaluated in the Water Quality Control Plan” and “will not impact upstream water users, whether to meet water quality requirements, increased flows, or for other mitigation requirements.” To ensure the realization of these policies, we request that your agencies commit to the following specific actions in regard to the BDCP and the Bay-Delta Water Quality Control Plan (WQCP).

1. **BDCP EIR/EIS.** We would like a specific written commitment from the Natural Resources Agency that the BDCP EIR/EIS will analyze the potential impacts to the water supplies of water users that are not participating in the BDCP, and that the EIR/EIS will mitigate any such impacts. The analysis should recognize that any reduction in surface water supplies of water users not participating in the BDCP caused by any change in regulatory requirements to address BDCP project impacts -- whether the requirements modify river flows, adjust Delta outflow requirements, or impose additional restrictions on water diversions and operations -- is a significant impact.

We request that the written commitment also state that the BDCP EIR/EIS will mitigate these potential impacts by ensuring that, among other mitigations, the BDCP beneficiaries will fully participate in all phases of any State Water Board process to revise the WQCP and acknowledge that potential impacts to other water users are not unavoidable, but could instead be reduced by ensuring that the BDCP beneficiaries will provide additional flows, as appropriate. Consistent with the commitment, we request the following language in the BDCP EIR/EIS to describe this mitigation:

Mitigation: "In petitioning for any water rights permits or permit changes for implementation of the BDCP, the project proponents will request the inclusion of terms ensuring that the permits or permit changes are granted subject to the continuing authority of the State Water Resources Control Board to impose specific requirements on the BDCP permittees and project participants to implement the San Francisco Bay/Sacramento San Joaquin Delta Estuary Water Quality Control Plan, as amended, including any water quality objectives, Delta outflow requirements, or instream flow requirements developed for the Delta or Delta tributaries pursuant to the Plan."

2. State Water Board Actions on BDCP. We request that the State Water Board acknowledge its role in implementing the BDCP and acknowledge that any potential redirected impacts resulting from actions to implement the BDCP, including impacts from imposing additional flow obligations on water users that are not participating in the BDCP in order to increase the reliability of SWP and CVP deliveries, are an injury that must be avoided. We request that the State Water Board commit in writing to include in any permit or change issued to implement the BDCP a requirement that the permittees contribute water to meet the obligations imposed in any revisions to the Delta Water Quality Control Plan. We also request that the State Water Board ensure that this requirement, and the potential impacts that it is addressing, are analyzed in the BDCP EIR/EIS, which the agency will need to consider in undertaking any actions necessary to implement the BDCP.
3. Bay-Delta WQCP. We urge that the California Natural Resources Agency and the State Water Board commit that the policies set forth in your February 6, 2013 letter will be reflected in the final revisions to the Bay-Delta WQCP. We request that the Department of Water Resources acknowledge that in order to carry out the policies articulated in your letter, the BDCP must establish the baseline environmental conditions and baseline operations (in reference to which the BDCP beneficiaries are entitled to divert water) at the present CVP and SWP operational levels, and the EIR/EIS must set forth a commitment that mitigation for any increases in reliability above the present levels is the obligation of the BDCP permittees.
4. State Water Board Implementation of the WQCP. Finally, we request that the State Water Board confirm in writing that it will recognize water rights priorities and

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protections provided by the Water Code as it implements any changes in the Bay-Delta WQCP. We request that the State Water Board commit that any actions to implement revisions to the WQCP, either through amendments to water rights authorizations or through actions pursuant to other state or federal laws, will be undertaken only after finding that the affected entity's operations are the cause of the condition addressed by the action and that the action does not exceed the entity's proportional contribution to the condition addressed by the action.

Once again, the articulation of the policies of the Natural Resources Agency set forth in your February 6, 2013 letter and the State Water Board's recognition that the 'no injury' rule must be followed in making changes to water rights are appreciated. We believe that the commitments described in this letter will assist in assuring us, and other water users, that these policies will be implemented and used to guide the important water planning activities being undertaken by your agencies.

Very truly yours,



Alexander R. Coate
General Manager

cc: Frances Spivy-Weber
Tam Doduc
Steven Moore
Felicia Marcus
Dorene D'Adamo
Thomas Howard
Gerald Meral